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IN THE

Supreme Court of the United States

October Term, 1970

No. .....

THE LOS ANGELES FREE PRESS, INC., a California corporation,

Petitioner,

vs.

THE CITY OF LOS ANGELES, a municipal corporation; THOMAS REDDIN, Chief of the Police of the City of Los Angeles; THE COUNTY OF LOS ANGELES; PETER PITCHESS, Sheriff of the Los Angeles County,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

To the Honorable Warren Burger, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

The Los Angeles Free Press, Inc., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in the above entitled case on September 30, 1970.

Opinions Below.

Petitioner's petition for a writ of mandamus seeking press credentials for its reporters was denied by the Superior Court of the State of California for the Coun-

ty of Los Angeles on January 3, 1969. The decision was affirmed by the Court of Appeal of the State of California, Second Appellate District, on July 8, 1970 by an opinion printed at 9 Cal. App. 3d 488; The Court of Appeal denied a timely petition for rehearing on July 28, 1970.

Questions Presented.

1. Whether petitioner's newspaper has First and Fourteenth Amendment rights of access to information, which rights have been abridged by the denial of press credentials to its employees.

2. Whether a state agency may bestow press passes for access to news events only upon those media said agency in its discretion deems worthy of said passes.

Jurisdiction.

Petitioner's petition for hearing before the Supreme Court of the State of California was denied on September 30, 1970.

The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3).

Statutes Involved.

United States Constitution, First Amendment.

United States Constitution, Fourteenth Amendment.

Statement of the Case.

Petitioner is an "underground" newspaper in Los Angeles, California, with a weekly readership at the time of trial of approximately 25,000 and a paid circulation of in excess of 85,000. The City of Los Angeles, and the County of Los Angeles, through the police

and sheriff respectively, have a system of issuing press passes to reporters of the communications media. The passes are recognized by law enforcement agencies to allow reporters access through police lines to many newsworthy events.

Petitioner has been attempting unsuccessfully for over three years to obtain passes for its reporters. No other publication, save one with an infinitesimal circulation, has ever been denied press credentials by the city or county of Los Angeles. While respondents do not directly admit that they deny petitioner's employees press passes because they disapprove of petitioner's newspaper, they have admitted that petitioner's content and advertising have influenced that decision. On direct examination by County Counsel as to the reasons for the denial of the press pass, Sgt. Campbell of the Sheriff's Office testified: "One item that we raised an eyebrow about was the fact that some of their writings in the Free Press were pro-LSD, and some of their advertising was pro-marijuana, pro-abortion, and various other things that are a matter of record in their printing, and that there are at the present time laws against such things as that they were advocating.

"There also was advertising pertaining to sex advertising, and things of this nature, which we felt was not particularly in the best interest of the community or of the children in the community, and that the Sheriff's Department was not about to be a party to backing this type of a newspaper by issuing them a press credential." [Rep. Tr. 132-133].

Likewise, Sgt. Cooke of the Los Angeles Police Department testified under questioning by the court as follows:

> "Well quite obviously, your Honor, if someone brings in a newspaper and it doesn't come under what our connotation has been as far as hard news is by the content. If . . . We have had underground newspapers in the past that have come in and requested credentials, and the type of thing that they are reporting, the type of stories they are writing, what I would personally determine as being either pornographic or vile in my personal opinion. This naturally has an effect. However, so far, these kind of papers have not qualified initially but, naturally I am still concerned with their content." [Rep. Tr. 307].

The respondents have, however, manufactured various grounds for not issuing the credentials, which grounds shifted throughout these proceedings. These grounds included lack of enough police beat news; lack of a "need to know"; non-daily publication; sociological rather than factual reporting; and finally (incredibly) that the Los Angeles County Sheriff had absolute discretion.

The Superior Court of Los Angeles County decided essentially that since this was a mandamus action, petitioner must show a governmental abuse of discretion and that the reasons given by respondents for denial at trial, were adequate to show a reasonable exercise of that discretion. Petitioner argues that a system that allows non-journalist policemen discretion to exclude a newspaper from any news event solely on those individuals' subjective view of the publication, is an horrendous denial of freedom of the press and a denial of equal protection.

Reasons for Granting This Writ.

I. The Utilization of a Press Pass System to Interfere With the News-Gathering Function of the Bodied Press Presents Important Unbridled Constitutional and Social Issues.

Why is this case important—why should the Supreme Court examine what seems to be a parochial problem in Southern California? After all, this is not the *New York Times*, the *Washington Post* or the *Wall Street Journal;* it is *The Los Angeles Free Press*. That is exactly why it is important.

The Los Angeles Free Press is an "underground" newspaper—a new breed of publication with a new political point of view; a publication aimed at the young and the radical.

All of the weight of the law enforcement agencies of Los Angeles County have been aimed at quieting this voice. If this conduct of the police and the sheriff is not stopped and stopped now, more fuel will be fed to the flames of national disillusionment by those who are already alienated. If those who speak out against the established order are denied the full use of legitimate channels of communication, they will be forced to seek illegitimate ones.

The respondents' conduct constitutes an elemental denial of freedom of the press by interfering with that freedom at its outset—before the news gathering begins. Apparently, respondents are reacting to Napoleon's contention that, "Three hostile newspapers are more to be feared than a thousand bayonets."

Respondents and the California courts dodge this denial of freedom of the press by arguing that no newspaper has a right superior to the public at large either to cross police lines or to enter press conferences. But

where a portion of that public is admitted, petitioner may not be denied access simply because of its content.

Abridgments of freedom of press may take many forms, and respondents should not be rewarded for their subtlety ". . . in the domain of indispensable First Amendment liberties, it is essential not to limit the protection of the right to any particular way of abridging it." *Grosjean v. American Press Co.*, (1936) 297 U.S. 233, 249; 56 S. Ct. 444, 449; 80 L. Ed. 660.

The federal courts have heeded this rule. There are no court of appeal cases with similar facts and there probably never will be. The District Court in Rhode Island knew that the government cannot issue press passes based upon a paper's content and with unlimited discretion. The newspaper therein had failed to qualify for technical reasons, but the court went out of its way to say, "Nevertheless, because such regulation imposes a burden not only upon the vital newsgathering of the free press, but also upon the right general public to travel on the public way, and must contain clear and narrow guidelines". *Strasser v. Doorley*, 309 F. Supp. 16 (1970).

In the U.S. District Court for the Eastern District of Virginia, the City of Richmond hardly got past the courthouse steps when the court on an application for injunction issued its order compelling the issuance of press passes forthwith to the reporters of the "underground" *Richmond Chronicle*. There was no written opinion. *Richmond Chronicle v. Groth*, June 18, 1970, Case No. 332-70-R.

This issue is an important one to the newspaper, its quarter million readership, and the tradition of a

free and radical press. It is even more important that this newest form of interference with a free press be stopped.

2. The Issuance of Press Passes to All Other Publications Except Petitioner, Constitutes an Abuse of Freedom of the Press and a Denial of Equal Protection of the Laws.

Respondents argue that petitioner has no constitutional rights which have been denied in these proceedings. They cite a line of cases standing for the proposition that a news gatherer has no constitutionally protected right of access to information superior to that of the public generally. See, for example, *Tribune Review Publishing Co. v. Thomas*, (1958) 254 F. 2d 883; *United Press Association v. Valente*, 308 N.Y. 71, 123 N.E. 2d 777, 778 (1954).

In the first place, the right to receive information has apparently been decided by this court. In *Lamont v. Post Master General*, 381 U.S. 301 (1965) this court held that the First Amendment does protect the right to receive information. In his concurring opinion, Justice Brennen states directly: "The First Amendment necessary protects the right to receive information." (*Id.* at p. 308) The impact of the *Lamont* decision on the line of Federal and State cases following the *Tribune Review* and *Valente* cases has yet to be decided by this court.

In the second place, the respondents' argument fails to comprehend that petitioner does not necessarily rely on the right to be treated superior to the public at large. A special class of petitioner's equals has *already* been created by respondents in the creation of the press pass system. Whether petitioner can be excluded from that class of news publishers on grounds only remotely

related to the necessities of that system is a question of importance yet to be decided.

As stated, no other applicant has ever been denied press passes for its reporters by the city of Los Angeles except one very small newspaper. The largesse of the government of Los Angeles County has been distributed to all except petitioner. It is basic that the guarantee of equal protection embodied in the Fourteenth Amendment of the United States Constitution prohibits the state from arbitrarily discriminating among persons subject to its jurisdiction. Any classification must bear a rational relationship to a legitimate public purpose. *Rinaldi v. Yeager*, (1966) 384 U.S. 305, 308, 309; 16 L. Ed. 2d 577, 579-580; 86 S. Ct. 1497.

Moreover, "in cases involving suspect classifications or touching on fundamental interests, the state bears the burden of establishing not only that it has a compelling interest which justifies the law, but the distinctions drawn by the law are necessary to further its purpose". . . . *Shapiro v. Thompson*, (1969) 394 U.S. 618, 638; 22 L. Ed. 2d, 600, 617; 89 S. Ct. 1322; *Sherbert v. Verner*, (1963) 374 U.S. 398, 406; 10 L. Ed. 2d 965, 971; 83 S. Ct. 1790. See also, Developments in the Law—Equal Protection (1969) 82 Harv. L. Rev. 1064, 1120-1131.

As stated in *NAACP v. Button*, 371 U.S. 415, 438 (1963): "Broad prophylactic rules in the area of free expression are suspect [citations]. Precision of regulation must be the touchstone in an area so closely touching our most precious freedom. . . ."

The law clearly requires a balancing of competing interest. However these interests must be balanced in *each case*. See *Barenblatt v. United States*, 360 U.S.

109, 126. Instead of determining whether, at any particular news event a limited number of reporters should be allowed, respondents have prevented petitioner and its reporters from ever attending a credentialed news event.

Respondents argue that their regulations are reasonable. However, even the California courts have stated that "The general reasonableness test applicable to the due process and equal protection clauses is not to be utilized when First Amendment rights are at stake." *Wirta v. Alameda Contra Costa County Transit District*, 68 Cal. 2d 51, 60 (1969). It is now for this court to determine whether the usual rules pertaining to the regulation of First Amendment rights, as cited in this petition, apply to a state-imposed press-pass system.

The First Amendment rests on the premise "That right conclusions are more than likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Respondents, by restricting access to news, have sought to silence one of these tongues. To the extent that they are successful, they have driven one more nail into the coffin of freedom of the press.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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No. 1171

THE LOS ANGELES FREE PRESS, INC., a California corporation,

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vs.

THE CITY OF LOS ANGELES, a municipal corporation; THOMAS REDDIN, Chief of Police of the City of Los Angeles; THE COUNTY OF LOS ANGELES; PETER PITCHESS, Sheriff of Los Angeles County,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

To the Honorable Warren Burger, Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondents respectfully submit, pursuant to Rule 24 of this court, that the petition for writ of certiorari filed herein should be denied on the grounds that this case is not one presenting any substantial federal question not heretofore determined by this court or any "special and important" reasons required by Rule 19 of this court for review by writ of certiorari.

QUESTIONS PRESENTED

1. Does the First Amendment to the United States Constitution give the petitioner a right of access to gather information at the scenes of crimes and disasters superior to that of the general public?

2. Was the petitioner denied equal protection of the laws by respondents' policy to grant priority to cross police lines at the scenes of crimes and disasters to those members of the news media who regularly report police and fire news?

STATEMENT OF THE CASE

As set forth in the findings of fact of the trial court, which are included verbatim in the decision of the Court of Appeal of the State of California reported in 9 Cal. App. 3d 448 at pages 451-453, the petitioner applied to the Los Angeles Police Department and the Los Angeles County Sheriff's Department for issuance of press passes to its reporters. These passes are used by representatives of the news media to cross police lines and enter areas closed to the general public to provide access to information at the location of crimes, fires, or natural disasters and press conferences held by policing authorities where such access is denied to the public generally.

The number of press passes issued by respondents is restricted for the purpose of protecting the public

safety, health and welfare and to contribute to the efficient performance of police duties at crime and disaster scenes.

The respondents have refused and continue to refuse press passes to free lance and part-time reporters, representatives of specialized publications and members of the news media generally who perform functions other than those directly connected with the regular gathering and distribution of hard core news generated through police and fireman activities.

Respondents denied petitioner's application for press passes for its employees because their investigation of petitioner's application showed that petitioner's publication did not regularly engage in the gathering and reporting of spot, hard core police and fire news and that a need for press passes was lacking. Respondents' investigation established that petitioner is instead engaged in publishing materials primarily consisting of feature articles with some essay type reports having to do with events current and past such as riots, demonstrations, etc. where the reporting of such events focused largely on sociological considerations.

Twenty separate editions of the Free Press introduced at the trial for the purpose of reflecting the paper's editorial content and format established that such editions carried no current regular hard core police beat or fire news as such, and that the news coverage of such issues was pointed toward sociological prob-

lems existing in society. (Findings of Fact-Clk. Tr. Pages 170-174)

Petitioner's assertion in its statement of the case that respondents denied press passes to its reporters because they disapproved of petitioner's newspaper are not substantiated by the record and are contradicted by the findings of the trial court. (Clks. Tr. pages 170-174)

Petitioner's further contention that respondents manufactured various grounds for not issuing press passes is equally contrary to the trial court findings.

Petitioner's statement of the case ignores the findings of fact of the trial court and is based almost entirely on excerpts from the testimony of two witnesses, Sgt. Campbell and Sgt. Cooke, taken out of context. These excerpts are inconsistent with the rest of the testimony of these witnesses and the matters included in the quoted excerpts were not found to be true by the findings of the court.

ARGUMENT

1. PETITIONER HAS NO FIRST AMENDMENT RIGHT OF ACCESS TO GATHER INFORMATION AT THE SCENES OF CRIMES AND DISASTERS SUPERIOR TO THAT OF THE GENERAL PUBLIC.

This court and other Federal and State courts, in many cases, have already passed on the question whether the right to gather information is protected by the First Amendment and have uniformly held that it is not.

In *Zemel v. Rusk*, 381 US 1, 14 L. ed. 2d 179, 85 S. Ct. 1271, this court held that the First Amendment right to speak and publish does not carry with it the unrestrained right to gather information, and said at page 190 of 14 L. ed 2d:

> " . . . We must agree that the Secretary's refusal to validate passports for Cuba renders less than wholly free the flow of information concerning that country. While we further agree that this is a factor to be considered in determining whether appellant has been denied due process of law, we cannot accept the contention of appellant that it is a First Amendment right which is involved. For to the extent that the Secretary's refusal to validate passports for Cuba acts as an inhibition (and it would be unrealistic to assume that it does not), it is an inhibition of action. There are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes

the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information."

In *Tribune Review Publishing Co. v. Thomas*, 254 Fed. 2d 883, the United States Court of Appeals, Third Circuit, came to the same conclusion, and said at page 885:

"Realizing that we are not dealing with freedom of expression at all but with rules having to do with gaining access to information on matters of public interest, can it be argued that here there is some constitutional right for everybody not to be interfered with in finding out things about everybody else? We suppose it would not be contended that a newspaper reporter or any other citizen could insist upon entering another's land without permission to find out something he wanted to know . . . We think that this question of getting at what one wants to know, either to inform the public or to satisfy one's individual curiosity is a far cry from the type of freedom of expression, comment, criticism so fully protected by the first and fourteenth amendments of the Constitution."

In *State v. Buchanan*, 250 Ore. 244, 436 Pac. 2d 729, the court said at page 731 of 436 Pac. 2d:

> " . . . While the government from time to time extends to selected representatives of news media privileges (such as access to war zones and seats on a presidential aircraft) not accorded the general public, it has not been suggested that these privileges are necessarily rights conferred by the Constitution solely upon those who can qualify as members of the press.
>
> On the contrary, it has been held that those claiming to be news gatherers have no constitutional right to information which is not accessible to the public generally."

The New York Court of Appeals in *United Press Assn. v. Valente*, 308 NY 71, 123 NE 2d 777, said at page 783 of 123 NE 2d:

> "The fact that petitioners are in the business of disseminating news gives them no special right or privilege, not possessed by other members of the public."

To the same effect, see *Worthy v. Herter*, 270 Fed. 2d 905; *N.Y. Post Corp. v. Moses*, 204 NYS 2d 44, 53.

In *Trimble v. Johnston*, 173 Fed. Supp. 651, 656, the court held that liberty of the press does not include any legal right to assistance from public officials in procuring information and does not include a right on the part of representatives of the press to inspect documents not open to members of the public generally.

In view of the many cases which have already passed on this question and declared the First Amend-

ment inapplicable, there is no substantial Federal question to decide in this case nor is there any "special or important" reason to review the matter again by writ of certiorari herein. (Rule 19, Rules of the United States Supreme Court)

A Federal question suggested by a petitioner may have been so explicitly foreclosed by previous decisions as to leave no room for real controversy and afford no basis for a writ of error from the Supreme Court of the United States to a state court.

> *Leonard v. Vicksburg, etc. RR Co.*, 198 US 416, 49 L. ed. 1108, 1111 and cases cited therein.

The fact that the petitioner describes itself as "an 'underground' newspaper—a new breed of publication with a new political point of view; a publication aimed at the young and radical" gives it no greater right of access to the scenes of crime or disaster than it would otherwise have and presents no "special or important" reason for review by certiorari.

The record fails to support petitioner's contentions that respondents use the system of press passes to interfere with the news gathering function of the so-called radical press or that petitioner's employees are denied access to cross police lines and enter press conferences simply because of the content of the Free Press. Petitioner's claim that this presents an issue for decision by this court is therefore groundless.

Neither *Lamont v. Postmaster General*, 381 US 301, 14 L. ed 2d 398, 85 S. Ct. 1493, *Grosjean v. American Press Co.* 297 US 233, 80 L. ed 660, 56 S. Ct. 444, nor *Strasser v. Doorley*, 309 Fed. Supp. 716, cited by petitioner, considered or discussed the question whether seeking and gathering information by reporters for the news media was a First Amendment right. There is no indication in the petition for certiorari that *Richmond Chronicle v. Groth* did either.

The above authorities lend to the conclusion that, despite petitioner's contentions to the contrary, there is really no first amendment right involved in this case.

2. PETITIONER WAS NOT DENIED EQUAL PROTECTION OF THE LAWS BY RESPONDENTS' POLICY TO GRANT PRIORITY TO CROSS POLICE LINES AT THE SCENES OF CRIMES AND DISASTERS TO MEMBERS OF THE NEWS MEDIA WHO REGULARLY REPORT POLICE AND FIRE NEWS.

Issuance of press passes by the respondents constituted an exercise of the police power to control the number of persons present at the scene of a crime or disaster for the purpose of allowing law enforcement and rescue personnel to carry out their duties without interference and to promote the order, safety, health and welfare of society.

This court and other courts have long ago clearly established the law relating to the requirements of equal protection in the exercise of the police power. The California court decision sought to be reviewed

herein is completely consistent with the established law and there is no important question of Federal law to be decided in this case.

The equal protection clause of the Federal Constitution does not take from a state the power to classify in the adoption of police regulations and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

> *Whitney v. California*, 274 US 357, 71 L. ed. 1095, 1103, 47 S. Ct. 641.

Normally state officers have the widest discretion in the exercise of the police power and that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious.

> *McLaughlin v. Florida*, 379 US 184, 13 L. ed 2d 222, 228, 85 S. Ct. 283 and cases cited therein.

In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things.

> *Louisville & Nashville RR Co. v. Melton*, 218 US 36; 54 L. ed 921, 929; 30 S. Ct. 676.

A classification, though discriminatory, is not arbitrary nor violative of the equal protection clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it.

Allied Stores of Ohio v. Bowers, 358 US 522, 3 L. ed 2d 480, 486, 79 S. Ct. 437.

If classification has some reasonable basis, it does not offend the Constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality.

Dandridge v. Williams, 397 US 471, 25 L. ed 2d 491, 501-502, 90 S. Ct. 1153.

The equal protection clause does not prevent classification nor require uniform treatment with respect to purposes or things which are in fact different.

County of Los Angeles v. So. Calif. Telephone Co., 32 Cal. 2d 378, 388-389.

There is no constitutional requirement of uniform treatment, only that there be a reasonable basis for the classification imposed.

Bilyeu v. State Employees Retirement System 58 Cal. 2d 618, 623.

A classification is reasonable if there are differences between the classes that are reasonably related to the purposes of the statute.

Werner v. So. Calif. Associated Newspapers, 35 Cal. 2d 121, 131.

The standard adopted by the respondents here of regular coverage of police and fire news for the issuance of press passes is clearly a reasonable basis for

classification of persons who seek to cross police lines, is closely related to the purpose for which it was established and treats alike all persons similarly situated.

Petitioner has failed to show that there is any "special or important" reason for granting a writ of certiorari herein.

The petition for certiorari reflects petitioner's lack of understanding of the respondents' basis for issuing press passes and the need for the press pass system and his contentions as to equal protection are clearly specious.

The creation of the press pass system did not create a class of petitioner's equals, but created a system of priority in granting permission to cross police lines based on the need to enter closed areas at the scenes of crimes and disasters. This basis is clearly and rationally related to the police power necessity of limiting the number of those present at such places. The public interest in seeing that law enforcement officers, fire fighters, medical and rescue personnel and disaster workers are able to carry out their duties without interfence in emergency situations involving risk of death or serious injury to people and extensive damage to property is so clear and compelling as not to require further elaboration.

Clearly this classification is neither arbitrary nor unreasonable.

Since the basis established by respondents for issu-

ing press passes is unquestionably valid, it is irrelevant whether or not other applicants have or have not been denied press passes.

Petitioner's suggestion that, instead of preventing an applicant from ever attending a news event, respondents should determine whether at any particular news event a limited number of reporters should be allowed, is unrealistic. Law enforcement officers have many and pressing duties at crime and disaster locations and cannot take the time to decide conflicting claims for access.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES.

APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

The Los Angeles Free Press, Inc., a California corporation, Plaintiff and Appellant, vs. The City of Los Angeles, a Municipal corporation, et al., Defendants and Respondents. Civil No. 36326.

Filed: July 8, 1970.

APPEAL from judgment of the Superior Court of Los Angeles. John H. Rice, Judge. Affirmed.

Mitchell Shapiro, Richard E. Posell for Appellant.

Roger Arnebergh, City Attorney, George J. Franscell, Assistant City Attorney, Louis H. DeHaas, Jr., Deputy City Attorney, for Respondents the City of Los Angeles and Thomas Reddin.

John D. Maharg, County Counsel, Robert C. Lynch, Assistant County Counsel, Michael H. Dougherty, Deputy County Counsel, for Respondents County of Los Angeles and Peter Pitchess, Sheriff.

Petitioner, The Los Angeles Free Press, Inc. (Free Press) appeals a judgment denying a writ of mandate and an injunction to require respondents—the City of Los Angeles, the Los Angeles Chief of Police, the County of Los Angeles, and the Los Angeles County Sheriff—to issue press identification cards to Free Press reporters. The trial court's findings of fact and conclusions of law disclose the nature of the cause:

"I

"Petitioner is a California corporation with its principal place of business in the City of Los Angeles, County of Los Angeles, State of California. It publishes a weekly paper, The Los Angeles Free Press (hereinafter called the 'Free Press'), which has a circulation of over 85,000 copies each week and employs eight full-time reporters and photographers, in addition to others who report for the paper on a part-time basis. The Free Press has qualified as a second-class publication for mailing purposes.

"II

"On or about January, 1967, Petitioner applied to both the Los Angeles Police Department and the Los Angeles County Sheriff's Department for issuance of press identification cards (hereinafter called 'Press

Passes') to qualified reporters of the Free Press. No application for Press Passes was made by Petitioner directly to the County of Los Angeles, acting through its Board of Supervisors.

"III

"The City of Los Angeles Board of Police Commissioners is authorized by Section 52.16 through 52.20 of the Los Angeles Municipal Code to issue Press Passes to qualified applicants. There is no Los Angeles County ordinance applicable to the issuance of Press Passes but the Sheriff of Los Angeles County, in the exercise of his discretion, does issue Press Passes to qualified applicants. The County of Los Angeles, acting through its Board of Supervisors, does not accept applications for, or issue Press Passes, or order the granting or denial of such credentals to any person.

"IV

"Press Passes are used by reporters and other representatives of daily and non-daily newspapers, news services, radio stations, television stations and networks to cross police lines and enter areas closed to the general public and thus provide access to information at certain locations, as for example, the scene of crimes, fires or natural disasters and press conferences by policing authorities, where such access is denied to the public generally. The local demand for such Press Passes is substantial, the Los Angeles Police Department currently issuing approximately 1800 each year and the Sheriff of Los Angeles County issuing approximately 3,000 each year.

"V

"The number of Press Passes issued by Respondents is now restricted, the purpose of such restriction being

to protect the public safety, health and welfare and to contribute to the efficient performance of policing duties. Respondents' present restrictive policy in issuing Press Passes originated in the chaos which accompanied a major train wreck in this area several years ago when rescue operations were seriously impeded by the presence of too many authorized onlookers at the scene of the accident.

"VI

"When an application for a Press Pass is received by the Los Angeles Police Department or by the Los Angeles County Sheriff's Department, an investigation is made by the department to which such application is made to determine whether such an identification card is needed in connection with the applicant's regular course of business in gathering and distributing spot police-beat and fire news. The basic standard of eligibility for Press Passes imposed by each of the Respondents necessitates therefore, some review of the work product of the applicant—whether it be a news service, newspaper, other publication, radio or television station or network to ascertain if it is in fact regularly engaged in gathering and distributing (through publication, broadcasting, telecasting, etc.) of such spot news. Each of the Respondents has refused and continues to refuse Press Passes to free-lance and part-time reporters, representatives of specialized publications such as trade papers, theatrical or financial papers, college newspapers and members of the news media generally who perform functions other than those directly connected with the regular gathering and distribution of hard core news generated through police and firemen activities.

"VII

"After eligibility of an applicant has been established, Press Passes are issued by each of the Respondents directly to the reporters, cameramen, technicians and other employees of such applicant who have been appropriately screened to avoid issuance of such credentials to any person with a criminal background. Press Passes are thus issued only to individuals and not to the corporations or other entities engaged in the gathering and distribution of news by whom such individuals may be employed.

"VIII

"Each of the Respondents, in the exercise of discretion, denied Petitioner's application for Press Passes for Petitioner's designated employees on the ground that a need therefor was lacking because Petitioner's publication, the Free Press, is not regularly engaged in the gathering and reporting of spot, hard core police-beat and fire news. The exercise of such discretion by each of the Respondents was premised on their respective findings that Petitioner is instead engaged in publishing materials primarily consisting of feature articles with some essay-type reports having to do with events, current and past, such as riots, demonstrations, assassinations, news conferences, et cetera, where the reporting of such events is focused largely on sociological considerations.

"IX

"Twenty separate editions of the Free Press (ten copies selected by Petitioner and ten copies selected by Respondents) introduced into evidence pursuant to a stipulation that such evidence serve the limited purpose of reflecting the paper's editorial content and for-

mat, establish that such editions carried no then current regular hard core police-beat or fire news as such; and that the news coverage of such issues was pointed toward sociological problems existing in our society. Other evidence introduced at trial supports a finding that the emphasis of the Free Press is not on crime news between individuals and that from its inception the Free Press was designed to report news of civil riots, peace demonstrations, and 'conflicts between the individual and the state.'

"CONCLUSIONS OF LAW

"I

"Petitioner is a proper party to this proceeding and has no plain, speedy or adequate remedy at law.

"II

"In this mandamus proceeding this court may construe the constitutional provisions relied upon by Petitioner in order to ascertain whether any duty allegedly owed to Petitioner by Respondents may be enforced.

"III

"Petitioner, as a news gatherer, has no constitutionally protected right of access to information which is not freely accessible to the public generally.

"IV

"The denial by each of Respondents of Petitioner's application for Press Passes did not abridge Petitioner's right to either freedom of speech or freedom of the press and did not constitute a prior restraint under the First or Fourteenth Amendments of the United States Constitution or under Article I, Section 9 of the California Constitution.

"V

"The denial by each of Respondents of Petitioner's application for Press Passes did not arbitrarily discriminate against Petitioner in violation of its right to due process under either the United States Constitution or the Constitution of the State of California.

"VI

"The denial by each of Respondents of Petitioner's application for Press Passes did not arbitrarily discriminate against Petitioner in violation of its right to equal protection of the law under either the Constitution of the United States or the Constitution of the State of California. There is no constitutional requirement that Respondent show uniform treatment to all publications or news media in issuing Press Passes, the only requirement being that there be a reasonable basis for the classification imposed. The standards of eligibility for Press Passes imposed, respectively, by Respondents are fair and reasonable in the circumstances and do not constitute an unreasonable classification.

"VII

"The classification governing eligibility for Press Passes which each of Respondents has imposed does not constitute censorship or restriction upon the expression of ideas.

"VIII

"The issuance of Press Passes by each of Respondents is a legitimate exercise of the police power inherent in government and the equal protection clauses of the United States and California Constitutions do not limit the legitimate exercise of the police power.

"IX

"The petition for writ of mandamus filed by Petitioner herein alleges that Petitioner's application for Press Passes has been unlawfully denied in violation of the provisions of Section 52.16 of the Los Angeles Municipal Code, and, inasmuch as Petitioner thus asserts duties owed to him under such Code, Petitioner is precluded in this proceeding from questioning the constitutionality of such Code.

"X

"Each of the Respondents in denying Press Passes to Petitioner's employees was acting within areas of discretion legally authorized and the exercise of such discretion by each of the Respondents was not abused.

"XI

"None of the Respondents, in refusing Press Passes to Petitioner's employees, acted arbitrarily, capriciously or fraudulently. . . ."

Police Power. Petitioner does not contend that peace officers in the furtherance of public order and safety cannot reasonably restrict the number of persons crossing police lines at the scene of a crime or disaster. Nor does petitioner contend that the sheriff and the Los Angeles Chief of Police has set up police lines and denied the general public full access to newsworthy events at times when public order and safety did not call for such restrictions. (Even if such a contention had been made it would be of doubtful relevance, for here petitioner seeks to obtain a priority of access superior to that of the general public.) Rather petitioner contends that its liberty has been arbitrarily restricted and it has been denied equal protection and due process of law by the adoption and operation of a restric-

tive policy which violates the First and Fourteenth Amendments to the United States Constitution.

First Amendment. Does petitioner's status as the publisher of a weekly paper give petitioner under the First Amendment a right of access to the scenes of crimes and disasters superior to that of the general public? The answer, derived from a multitude of cases, is a clear *no*, and the trial court so held. (*Worthy v. Herter*, 270 F.2d 905, 907-909 [D.C. Cir. 1959]; *Tribune Review Pub. Co. v. Thomas*, 254 F.2d 883 [3rd Cir. 1958]; *Trimble v. Johnston*, 173 F.Supp. 651, 655-656 [D.C. 1959]; *United Press Associations v. Valente*, 123 N.E.2d 777 [Ct.App. N.Y. 1954]; *State v. Buchanan*, 436 P.2d 729 [S.Ct. Ore. 1968]; *New York Post Corp. v. Moses*, 204 N.Y.S.2d 44, 53-56 [S.Ct. N.Y. Co. 1960]; *Kirstowsky v. Superior Court*, 143 Cal.App.2d 745, 754-755.) Restrictions on the right of access to particular places at particular times are consistent with other reasonable restrictions on liberty based upon the police power, and these restrictions: remain valid even though the ability of the press to gather news and express views on a particular subject may be incidentally hampered. (*Zemel v. Rusk*, 381 U.S. 1, 16-17; *Cox v. New Hampshire*, 312 U.S. 596; *Garland v. Torre*, 259 F.2d 545, 548-549 [2nd Cir. 1958].)

Fourteenth Amendment—Equal Protection. If restrictions imposed on the public by the use of police lines do not deprive members of the public of their liberty without due process of law, and if petitioner, despite its press status, has no greater right to cross police lines than other members of the public, has petitioner nevertheless been denied equal protection of the laws by the operation of a policy which grants

priority to cross police lines to those members of the press who regularly report police and fire news? We think not. Because of the necessity in terms of public order and safety to restrict access to certain events, respondents could either deny the right to cross police lines to all members of the public, or they could distinguish between members on [some reasonable basis]. Regular coverage of police and fire news provides a reasonable basis for classification of persons who seek the privilege of crossing police lines. It is true, as petitioner points out, that respondents could have defined the class of persons to be given priority in crossing police lines by some other standard. Indeed, respondents probably could have granted the privilege of crossing police lines on a first-come-first-served basis. However, the issue under the equal protection clause of the Fourteenth Amendment is whether the classification upon which the unequal treatment rests is a reasonable one. The equal protection clause "[does] not prevent classification . . . [or] require [uniform treatment] . . . with respect to persons or things which are in fact different." (*County of Los Angeles v. Southern California Tel. Co.*, 32 Cal.2d 378, 388-389.) "A classification is reasonable . . . if there are differences between the classes and the differences are reasonably related to the purpose of the . . . [government in providing differing treatment]." (*Werner v. Southern Cal. etc. Newspapers*, 35 Cal.2d 121, 131.) Here, the purpose of granting priority to some to cross police lines is to allow the public to gain information about crimes, fires, disasters, and the like, without jeopardizing public order and safety in the process. This purpose is served by a classification of members of the public into those who regularly report such events in the public

media and those who do not and by a grant of priority to those who so report. The classification is a reasonable one for constitutional purposes, even though other classifications might have achieved the same result.

Cases relied upon by petitioner to support its argument that it has been denied equal protection of the laws, *Wirta v. Alameda-Contra Costa Transit District*, 68 Cal.2d 51; *Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536; and *Hillside Community Church, Inc. v. City of Tacoma*, 455 P.2d 350 (S.Ct. Wash. 1969), are inapposite for two reasons: first, they involve limitations on advertising or public meetings in instances where the need for such limitations had not been shown; second, the limitations were connected wtih the content of the ideas to be advertised or to be discussed. Here, the distinction between petitioner's employees and the recipients of press passes was not based on the ideas expressed in their reporting but rather on the need to cross police lines in the regular course of their business, a need which the trial court found less pressing for petitioner's employees than for recipients of press passes. We find sufficient evidence in the record to support the trial court's view that respondents issued press passes to those who reported police and fire events with some regularity, and respondents did not base their actions on the content of such reportage.

Fourteenth Amendment—Due Process. Petitioner contends that it was denied due process of law because the power to issue press passes had not been delegated by law to the Sheriff of Los Angeles County, and because there were no legally determined guidelines for the issuance of such passes. But in seeking a writ of

mandate petitioner has tacitly recognized the sheriff's authority to issue press passes. (Code Civ. Proc., § 1085.) Additionally, the argument lacks persuasiveness because the sheriff has a duty imposed by statute to enforce the laws of the state and maintain public order and safety, and such duty implicity carries the authority to limit public access to certain events. (See Gov.Code, §§ 26600, 26602, 26620, et seq. and Penal Code, § 409.5.) Clearly, the sheriff has discretion to permit or not permit certain persons to cross police lines, and the record before us fails to establish that he exercised his discretion unreasonably.

Petitioner makes the same argument about the lack of legislatively determined guidelines for the issuance of press passes by respondent Los Angeles Chief of Police. Section 52.16(A) of the Los Angeles Municipal Code declares that the Board of Police Commissioners is authorized to issue press passes to press representatives of daily newspapers or news services. Section 52.17 of the Los Angeles Municipal Code gives the Board reasonable discretion to limit the number of press passes and to deny press passes. Here again, the record fails to establish that in denying press passes to petitioner's employees the Chief of Police exercised his discretion unreasonably or in violation of the Municipal Code.

Fourteenth Amendment—Arbitrary Discrimination. As a final argument petitioner contends that even if the standards for press passes were reasonable, they were arbitrarily and discriminatorily applied against petitioner's interest because of its editorial policy. (*Yick Wo v. Hopkins*, 118 U.S. 356, 373-374.) Essentially, this argument raises an issue of fact. The

trial court found that respondents did in fact issue press passes on the basis of whether the applicant was a person who regularly covered police and fire news, and there is sufficient evidence in the record to sustain that finding.

The judgment is affirmed.

Fleming, *J.*

We concur:

Roth, *P. J.*

Herndon, *J.*

APPENDIX B.

Clerk's Office Supreme Court, 4250 State Building, San Francisco, California 94102.

September 30, 1970.

Los Angeles Free Press vs. City of Los Angeles *In re:* 2 Civ. No. 35326.

Dear Sir: *I have this day filed Order Hearing Denied.*

Respectfully,

William I. Sullivan, *Clerk*

CERTIORARI DENIED

N.C.R.